

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

JOSEPH EARL CLARK, II,)	
)	
Petitioner,)	
)	
v.)	1:16CV672
)	
FRANK L. PERRY,)	
)	
Respondent.)	

ORDER

On August 8, 2017, the United States Magistrate Judge filed a Recommendation and notice was served on the parties pursuant to 28 U.S.C. § 636. Doc. 14. The Magistrate Judge recommended that the respondent's motion for summary judgment be denied. No objections were filed as to that portion of the Recommendation, and upon review the Court affirms and adopts that determination.

In response to the Recommendation, the respondent filed a notice, Doc. 16, stating that it had elected to give the petitioner a new prison disciplinary hearing. As noted in the Recommendation, the decision to vacate the prior disciplinary action and conduct a new disciplinary hearing would appear to moot the present case. However, the petitioner objects to that determination and contends that his claims are not rendered moot because, *inter alia*, he was not afforded all of his due process rights during the rehearing. The record does not appear to be complete, and therefore the Court will allow the respondent 14 days to file a motion to dismiss the present case as moot, with supporting information and documentation. The petitioner will have 14 days to respond, and the respondent will

have 7 days to reply. In addition, the parties should address whether any challenge by the petitioner to the new disciplinary hearing should be raised in a new petition after exhaustion of available remedies, or whether the present case should be stayed to allow the petitioner to exhaust his available remedies and then move to amend the petition to raise his challenge to the new disciplinary hearing in this case.

IT IS THEREFORE ORDERED that the respondent's motion for summary judgment, Doc. 6, is **DENIED**. The Recommendation is adopted to the extent stated herein.

IT IS FURTHER ORDERED that in light of the respondent's notice, Doc. 16, and the petitioner's objection, the respondent may file a motion to dismiss this case as moot within 14 days of this Order, the petitioner may file a response 14 days thereafter, and the respondent may file a reply 7 days thereafter, addressing the matters noted above.

This, the 28th day of August, 2017.


UNITED STATES DISTRICT JUDGE